C. Alan Burke, et ux

Petitioners

DEPUTY ZONING COMMISSIONER OF BALTIMORE COUNTY Case No. 88-452-SPH

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1.

\* \* \* \* \* \* \* \* \* \*

The Petitioners appeared, testified, and were represented by Counsel, Dawn Oxley Musgrave, Esquire. Also appearing on behalf of the Petition were: Janet L. Onion, Patricia S. Nunn, W. E. Cadell, H. E. Lacey, and Richard J. Hunt. Mr. & Mrs. Charles Martin appeared as Protestants.

Testimony indicated that the subject property, known as 122 Smithwood Avenue, is zoned D.R. 3.5 and is improved with a one and one-half story brick and shingle home divided into two apartments. Testimony indicated that the Petitioners purchased the subject property since November 1984 and since that time Jhave used the property continuously and without interruption as a two-apartment welling. The Petitioners called Audrey Burke, Mr. Burke's mother, as a witness establish the subject property's nonconforming use as a two-apartment dwelng since prior to the 1945 zoning regulations. Ms. Burke testified that she as born in 1928 and has lived in the area since that time at 126 Smithwood Aveue. Ms. Burke testified that the subject property was used as a two-apartment wiwelling prior to 1945. She testified that to the best of her knowledge and belief at all times the property has been used continuously and without inter-8 a two-apartment dwelling.

Mr. Cadell testified that he was born in 1915 and resided until 1955 at 118 Smithwood Avenue. He distinctly remembers 122 Smithwood Avenue being built in the 1920s as a two-apartment dwelling.

Mr. Hunt testified that he was born and raised at 125 Smithwood Avenue from 1930 to 1943. He thereafter visited the property on a regular basis until the death of his father in 1969. He indicated that at all times during that time and to the best of his knowledge, the subject property has been used continuously as a two-apartment dwelling.

Ms. Onion, Mr. Burke's aunt, testified that she was born and raised at 126 Smithwood Avenue and resided there from 1932 to 1961. Ms. Onion also remembers the property always being used as a two-apartment dwelling.

In further support of their position, the Petitioner introduced three affidavits which have been marked Petitioner's Exhibits 2A, 2B and 2C. The affidavit of George and Jessie Coppersmith indicated that they owned the subject property from 1955 until the Petitioners' purchase in November 1984. During their ownership, the dwelling contained two-apartments and was used continuously as a two-apartment dwelling. The affidavit of William Hunt, Jr. indicated that he resided at 125 Smithwood Avenue from 1920 to 1952. Mr. Hunt's affidavit indicated that at the time 122 Smithwood Avenue was built, it was constructed as a two-apartment dwelling. The affidavit of Isabelle Craig, resident of 117 Smithwood Avenue since 1921, provides the names and addresses of each of the tenants of the first and second floor apartments whom Mrs. Craig remembers from 1925through 1945.

Following the testimony of the supporting witnesses, Mr. & Mrs. Martin indicated that they did not object to the Petitioners' request for approval of the nonconforming use of the subject property.

> The Petitioners seek relief from Sections 104.1 and 500.7 of the Baltimore County Zoning Commissioner (B.C.Z.R.).

After due consideration of the testimony and evidence presented, it is clear that a nonconforming use of the subject property as a two-apartment dwel-

Pursuant to the advertisement, posting of the property, and public hearing held, and for the reasons given above, the relief requested in the special hearing should be granted.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore 1988 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a two-apartment dwelling, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED, from and after the date of this Order.

> (Im M Na, knowing ANN M. NASTAROWICZ Deputy Zoning Commissioner of Baltimore County

CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY

88-452-5PH

Posted for: Special Hearing

Petitioner: C. Olan Bushe Vet ux

ocation of property 101/10 Location of property: W/S of Amille with are. 123'S of

Class man are: (122 Amithwood are)

Location of Signs: Classfront of 122 Somith with are. 

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper printed and published in Towson, Baltimore County, Md., appearing on

THE JEFFERSONIAN,

Susan Sudie Obrest

33.75

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public more County will hold a public.

hearing on the property identified hearing on the property identified herein in Room 106 of the County Office Building, located at 11 W. Chesapeake Avenue in Towson, Maryland as follows:

Arryland as follows:
Petition for Special Hearing
Case number: 88-452-5PH
W/S Smithwood Avenue, 123
Edmon Json Avenue
(122 Smithwood Avenue)
11th Election Die\* t

Little Consolination District

two apartment dwelling.
In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commispeal period business and the support of th

request for a stay of the issuance said permit during this period to good cause shown. Such request good cause shown. Such requirements be in writing and received in this office by the date of the hearing set allove or presented at the hear

I. ROBERT HAINI

Window Company S 30° 30' E (+15'2"----Rolling Rd Covered Porch Dutta Ac Esmithwood Avenue #121 Smithwood Ave

June 7, 1988

Dawn Oxley Husgrave, Esquire One Overbrook Road Catonsville, Maryland 21228

RE: Petition for Special Hearing W/S Smithwood Avenue, 123' S of Edmondson Avenue (122 Smithwood Avenue) - C. Alan Burke, et ux - Petitionera 11th Election District, 5th Councilmanic District Case No. 88-452-SPH

Dear Hs. Musgraves

Enclosed please find the decision rendered on the above-referenced case. The Petition for Special Hearing has been Granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal to the County Board of Appeals. For further information on filing an appeal, please contact this office.

Very truly yours,

ANN M. NASTAROWICZ Deputy Zoning Commissioner of Baltimore County

Alin:bjs Enclosures

cc: Hr. & Hrs. Charles Hartin 121 Smithwood Avenue, Catonsville, Hd. 21228

People's Counsel

PETITION FOR SPECIAL HEARING TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the continued use of 122 Smithwood Avenue as a two apartment

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser: Legal Owner(s): MM <14.30 . Alan Burke (Type or Print Name) (Type or Print Name) · ston Buch Linda L. Burke .... Linda L. Burke City and State Attorney for Petitioner:

.Dawn.Oxley\_Musgrave\_\_\_\_\_ 122-Smithwood-Avenue----788-0771 Catonsuille, Maryland 21228 Name, address and phone number of legal owner, con-

One Overbrook Boad Catonsville, Maryland 21228

(Type or Print Name)

Dawn Oxley Musgrave (Attorney)... Attorney's Telephone No.: (301)\_744=8675 One-Overbrook-Road---[301]\_744=8675

tract purchaser or representative to be contacted

Address Catonsville, MD 21228 ORDERED By The Zoning Commissioner of Baltimore County, this 2000 day 

required by the Zoning Law of Paltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be had before the Zoning Commissioner of Baltimore County in Room 108, County Office Building in Towson, Baltimore County, on the 1774 day of 2/2, 1955, at 2 o'clock

Zoning Commissioner of Baltimore County.

E.C.O.-No. I

(DYSI)

Pursuant to the advertisement, posting of property, and public hearing on the Petition and it appearing that by reason of the following finding of facts:

+297

DESCRIPTION OF 122 SMITHWOOD AVENUE

Beginning for the same at a point in the center of Smithwood Avenue at the end of the third line of all that parcel of ground by deed dated March 1, 1913 and recorded among the Land Records of Baltimore County in Liber WPC No. 409, folio 115, was granted and conveyed by Anthony A. Bergler and Annie Bergler, his wife, to Leonard W. Porter, anthony M. bergier and maine bergier, his wife, to be did a south and running thence and binding reversely on said third line South fifty-nine degrees thirty minutes West 131 feet 6 inches to the beginning of said line and to the beginning of said line and to the end of the second line described in said deed and running thence and binding reversely on a portion of the second line described in said deed South thirty degree thirty minutes East 60 feet to the center of a ten foot road or right of way as relocated, which is to be kept open for the use in common of the lot now being described and the lot adjacent thereto on the Southeast thereof, and running thence for aujacent thereto on the southeast thereof, and funning themce to a line of division and parallel with the first line in this description mentioned and in the center of said ten foot right of way as relocated, North fifty-nine degrees thirty minutes East 131.5 feet to the center of Smithwood Avenue, and running thence and binding on the center of Smithwood Avenue North thirty degrees thirty minutes West 60 feet to the place of the beginning.

Subject to the legal operation and effect of a ten foot right of way as described in an Agreement dated May 8, 1946, and recorded among the Land records of Baltimore County in Liber RJS No. 1462 folio 144 by and between Leonard W. Porter, et al.

Being known as 122 Smithwood Avenue, Baltimore, Maryland 21228.

121 Smilhwood avenue

After the public hearing is held, please send a copy of the Zoning Commissioner's Order to the Zoning Enforcement Coordinator, so that the appropriate action may be taken relative to the violation case.

. Whom it may

That of, which may

Tanuly, lived at

122 Smithwood. and

from 1941 to 1985

at that and 122

Smithwood are, was

2 Family the first first

and Mrs. Aring accupied

Baltimore County Zoning Commissioner Office of Planning & Zoning Towson, Maryland 21204 494-3353

Mr. & Mrs. C. Alan Burke 122 Smithwood Avenue Catonsville, Raryland 21228

Res Petition for Special Hearing Case Numbers 88-452-SPH W/S Smithwood Avenue, 123° S Edmandson Avenue (122 Smithwood Avenue) 11th Election District - 5th Councilmanie District Petitioner(a): C. Alan Burke, et ux

HEARING SCHEDULED: TUESDAY, MAY 17, 1988 of 8:00 0.m.

Deer Mr. & Mrs/. Burker

Please be advised that 1105 is due for advertising and posting of the above-referenced property. All fees must be paid prior to the hearing. Do not remove the sign and post set(s) from the property from the time it is posted by this office until the day of the hearing itself.

ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED.

Please make your check payable to Baltimore County, Maryland and bring it along with the sign(s) and post(s) to the Zoning Office, County Office Building, Room 111, Towson, Maryland 21204 fifteen (15) minutes before your hearing is scheduled to begin.

No. 52434 gn and post set(s), there BALTIMORE COUNTY, MARYLAND OFFICE OF FINANCE - REVENUE DIVISION e for each set not MISCELLANEOUS CASH RECEIPT K-01-415,000 AMOUNT \$ 71.03

To whom it may concern: 9, Isabel Eney Craig, a resident of Catorsville at 117 Smithwood ave since Catorsville at 11 pomuna.
1921, can testify that 122 Smithward are was originally built as a two apartment house its a child, I visited and played with the Hawkins boy James and the Wilson Children who rented the second floor apartment diving 1925 In 1942 then 1945 my 3 yr ald daughter was taken Care of ty mrs John Wells who rented the first floor of 122 Smithwood we Between 1928 × 1942 The second floor was rested to Dr. I fenerette and his ringe, a STER.

Suns of My Mother Suns.

21228

Baltimore County Zoning Commissioner
Office of Planning & Zoning Towson, Maryland 21204 494-3353

J. Robert Haines Zoning Commissioner

NOTICE OF HEARING

Morch 18, 1998

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, located at 111 W. Chesapeake Avenue in Towson, Maryland as follows:

Potition for Special Hearing Case Number: 88-452-5PH W/S Smithwood Avenue, 123' & Edmondson Avenue (122 Smithwesd Avenue) 11th Election District - 5th Councilmonia District Petitioner(s): C. Alen Burke, et ux HEARING SCHEDULED: TUESDAY, RAY 17, 1888 at 9:00 a.m.

Special Hearings The continued use of 122 Saithweed Avenue as a two epertment dwelling.

In the event that this Petition is granted, a building permit may be issued within the thirty (30) day appeal period. The Zoning Commissioner will, however, entertain any request for a stay of the issuance of said permit during this period for good cause shown. Such request must be in writing and received in this office by the date of the hearing set above or presented at the hearing.

J. ROBERT HAINES Zoning Commissioner of Baltimore County

> cas Down Oxley Musgrave, Esq. C. Alen Burke, et um Julia Mertin

> > 4200 Heritage Hill Lane Ellicott City, MD 21043

January 18, 1988

To whom it may concern,

I, William J. Hunt Jr. lived at 125 Smithwood Avenue Catonsville, MD from 1920 to 1952.

This is to advise you that the house at 122 Smithwood Avenue was a two apartment house when it was built and to my knowledge, it is still a two apartment house.

Yours truely.

William J. Hunt Jr.

Sworn and subscribed before me this 19 to of Manually

John & Chalincombe the Commission expires 11/11/1919

BALTIMORE COUNTY, MARYLAND INTER-OFFICE CORRESPONDENCE

Mr. J. Robert Haines TO Zoning Commissioner

P. David Fields

FROM Director of Planning and Zoning Zoning Petition Nos. 88-452-SpH 88-453-SpH, 88-454-SpH, SUBJECT\_88-456-4pH, 88-457-Sp7

In view of the subject of this petition, this office offers no comment.

Date April 13, 1988

PDF:JGH:dme

cc: Ms. Shirley M. Hess, Legal Assistant, People's Counsel

ZONING OFFICE

CC: Lawre Ofley Musgrave, Eg: 4/14/58/18

Man Benke 122 Smithwood AVE. tale smithwood and 126 Edgeword are. 5 Welvin dre. 203 Hilter Que. GOLDODSDALE RO. 227 Godan Rd

we, the underproved were formations
or the above proporty. We started negatiations
to purchase the shorty in July 1956 and
motel in on Delander, 1955, he purchased the property hecause it was a two apartment dwelling! ene would not have relately et of it were not. To my knowledge it had always her two exectments. Oscale well him in the prend from when we purchased it and wer continued to rest it during an residence those. The present awards in hovember 1984. alue is no entreuer do the second floor from ale duit + floor. Que had to 31 catpile and

STATE OF CALIFORNIA COUNTY OF \_\_ STATES \_\_ \_\_\_\_ On the stay As 1785 helore me. the undersigned, a Notary Public in and for said County and State, personally appeared with the same series and the same series and the same series are series as the same series and the same series are series as the same series are series are series as the same series are series as the same series are series are series are series are series as the same series are series

the state of the s peravaelly known to me for proven to me on the basis of satisfactors evidence) to be the personial whose name is a \_\_\_\_\_ .... distrument and acknowledged that said persons) executed the same

FOR NOTARY SEAL OR STAMP

Moteum in dear Charachina

Moteum in dear Charachina

Moteum in dear Charachina

Moteum in dear Charachina

My Commission Exp. Apr. 5 (195)

JOHN R DREXLER

## BALTIMORE COUNTY ZONING PLANS ADVISORY COMMITTEE

May 2, 1988

COUNTY OFFICE BLDG. 111 W. Chesapeake Ave. Towson, Maryland 21204

MEMBERS

Department of

Fire Prevention

Health Department

Project Planning

**Building Department** 

Board of Education

Zoning Administration

Industrial

Traffic Engineering

State Roads Commissio

Bureau of

Dawn Oxley Musgrave, Esquire One Overbrook Road Catonsville, Maryland 21228

> RE: Item No. 297 - Case No. 88-452-SPH Petitioner: C. Alan Burke, et ux Petition for Special Hearing

Dear Ms. Musgrave:

The Zoning Plans Advisory Committee has reviewed the plans submitted with the above referenced petition. The following comments are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties are made aware of plans or problems with regard to the development plans that may have a bearing on this case. Director of Planning may file a written report with the Zoning Commissioner with recommendations as to the suitability of the requested zoning.

Enclosed are all comments submitted from the members of the Committee at this time that offer or request information on your petition. If similar comments from the remaining members are received, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

Very truly yours,

James & Syer lite JAMES E. DYER Chairman Zoning Plans Advisory Committee

JED:dt

Enclosures

Baltimore County Department of Public Works Bureau of Traffic Engineering Courts Building, Suite 405 Towson, Maryland 21204



ZONING OFFICE

March 31, 1988



Dennis F. Rasmussen

Dear Mr. Haines:

Mr. J. Robert Haines

County Office Building

Towson, Maryland 21204

Zoning Commissioner

The Bureau of Traffic Engineering has no comments for items number 292, 293, 294, 295, 297) 298, 299 and 300.

Very truly yours.

Michael S. Flanigan

Traffic Engineer Associate II

MSF/pm1-b

Baltimore County Office Building

March 2, 1988

Location: W/S Smithwood Ave. 123' S. Edmondson Avenue Item No.: 297

Re: Property Owner: C. Alan Burke, et ux

Zoning Agenda: Meeting of 3/1/88

Gentlemen:

Baltimore County

Towson, Maryland 21204-2586

Office of Planning and Zoning

Fire Department

494-4500

Paul H. Reincke

J. Robert Haines

Towson, MD 21204

Zoning Commissioner

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below marked with an "X" are applicable and required to be corrected or incorporated into the final plans for the property.

" <del> " " " " " " </del>		Fire hydrants for the referenced property are required and shall be located at intervals or feet along an approved road in accordance with Baltimore County Standards as published by the Department of Public Works.	
----------------------------	--	---	--

)	2.	A second means of vehicle access is require	ed for the site.
---	----	---	------------------

	of the site.
) 3.	The vehicle dead end condition shown at
	EXCEEDS the maximum allowed by the Fire Department.

- ( ) 4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.
- (  $^{
  m X}$  ) 5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code," 1976 edition prior to occupancy.
- ( ) 6. Site plans are approved, as drawn.
- ( ) 7. The Fire Prevention Bureau has no comments at this time.

Special Inspection Division  Fire Prevention Bureau	Planning Group Special Inspection Division	Noted and Approved:_	Frie Preve	£	C')(L	ill
---	--	-------------------------	------------	---	-------	-----

BALTIMORE COUNTY OFFICE OF PLANNING & ZONING

County Office Building 111 W. Chesapeake Avenue Towson, Maryland 21204

Your	petition	has	been	received	and	accepted	for	filing	this
2nd	day	of .	Merch	l	_, 1	988 •			

Petitioner C. Alan Burke, et ux Petitioner's Attorney Dawn Oxley Mungrave

Received by: James R. Dver Chairman, Zoning Plans Advisory Committee